

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1327/88
T.A. No.

1988

DATE OF DECISION 19/5/89

Shri Jagat Narain, Petitioner

Shri Ashok Sen, Sr. Advocate Advocate for the Petitioner(s)
with Shri R.P. Gautam,
Versus

Union of India & Ors. Respondent

Shri P.H. Ramchandani, Sr. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P. Srinivasan, Administrative Member.

The Hon'ble Mr. T.S. Oberoi, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? To be referred
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

MGIPRRND-12 CAT/86-3-12-86-15,000

(T.S. Oberoi)
Member (Judl.)

(P. Srinivasan)
Member (Admn.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Regn.No.OA-1327/88

Date of Decision 19/5/1988

Shri Jagat Narain

... Applicant.

Versus

Union of India & Ors.

... Respondents.

For the applicant

... Shri Ashok Sen, Sr.
Advocate with Shri R.P.
Gautam, Advocate.

For the respondents

... Shri P.H.Ramchandani,
Senior Advocate.

CORAM: Hon'ble Shri P. Srinivasan, Administrative Member.
Hon'ble Shri T.S. Oberoi, Judicial Member.

JUDGMENT

(Judgement of the Bench delivered by Hon'ble
Shri P. Srinivasan, Administrative Member)

The applicant before us is currently working as Chief Editor, Vidhi Sahitya Prakashan, Legislative Department, Ministry of Law & Justice (CEVSP, for short) at Delhi. His prayer in this application is that the respondents, viz. the Ministry of Law and Finance be directed to place him in the scale of Rs.5900-6700 with effect from 1.1.1986. This is the date from which the recommendations of the 4th Pay Commission as accepted or modified by the Government of India were implemented in regard to all Central Government Servants. From that date new scales of pay referred to as "replacement scales" were substituted for the old scales hitherto in force for all posts under the Central Government.

2. Shri A.K. Sen, learned Senior Advocate appearing for the applicant fervently pleaded that on the principle of "equal pay for equal work", the applicant deserved to be placed on the pay scale of Rs.5900-6700, if not on a still higher scale. But the respondents had allotted the lower replacement scale of Rs.4500-5700 to him and had stuck to their decision, despite representations submitted by him. Though, in the application the applicant has cited

R. Sen

a number of posts in different Ministries of the Government to which the replacement scale of Rs.5900-6700 had been allotted from 1.1.1986, Shri Sen sought to justify the applicant's claim by comparing his duties and responsibilities with those of another post in the same Ministry, viz. the Head of the official language Wing ("HOL", for short) who draws pay in the scale of Rs.5900-6700/- on and after 1.1.1986. Unfortunately, Government omitted to refer the post held by the applicant - which carried a pay scale of Rs.2000-125-2500 at the time- to the Fourth Pay Commission, as a result of which the report of the Commission did not suggest any replacement scale for that post. According to Shri Sen, the post of CEVSP held by the applicant involved similar, if not more onerous, duties and responsibilities than ^{those} of HOL and the applicant has been discharging them with distinction. Therefore, denying the applicant the same scale as that allotted to the post of HOL was a clear case of hostile discrimination against him in flagrant violation of Article 14 of the Constitution.

3. Shri P.H. Ramchandani, learned Senior Central Government Standing Counsel sought to refute the contentions of Shri Sen. Tracing the history of the creation of the post of CEVSP, Shri Ramchandani submitted ^{that} it was from the very inception meant to be equivalent to the post of ^{applicant} Director in the Secretariat while the scale of pay to which ^{he} is laying claim now is attached to the higher post of Joint Secretary. In 1979, when the post was created, the scale of pay approved for it was Rs.2000-125-2500 but this was a mistake as it should have been Rs.2000-125-2500 as in the case of a Director in the Secretariat. The pay scale of Joint Secretary at the time was higher as Rs.2500-125-2750 which has since been revised to Rs.5900-6700 after 1.1.1986. The post of HOL carried the same pay scale as that of Joint Secretary

P.H. Ramchandani

prior to 1.1.1986, viz., Rs.2500-125-2750 and so it was also substituted by the corresponding replacement scale of Rs.5900-6700 from and after 1.1.1986. The applicant had raised no protest in 1979 when he was appointed as Chief Editor on a lower scale than that applicable to the post of HOL at the time and he cannot now be heard to say that his pay should be raised to equal the pay of HOL. Shri Ramchandani also submitted that the duties and responsibilities of HOL are much more onerous than those shouldered by the applicant as the former involved instant translation of all Bills into Hindi before their introduction in Parliament while the latter was concerned with translation of judgements of Courts already delivered and of past legislation and publication in Hindi of text books on legal subjects where the actual (creative) work of writing was "farmed out" to experts in the field.

4. Before we deal with the rival contentions we may note the evolution of the law on the subject as laid down in the judgements of the Supreme Court delivered from time to time. In Kishori Mohan Lal Bakshi Vs. Union of India, AIR 1962 SC 1139, the Court held that the principle of equal pay for equal work was an abstract doctrine incorporated in Article 39(d) of the Constitution as one of the Directive Principles of State Policy which were not enforceable in a Court of law : they had nothing to do with Article 14. Twenty years later, in 1982, in Randhir Singh Vs. Union of India & Or AIR 1982 SC 879, their Lordships of the Supreme Court noticed that "Directive Principles as has been pointed out in some some of the judgments of this Court, have to be read into the fundamental rights as a matter of interpretation." Accordingly, the Court (in Randhir Singh's case) pronounced thus "Construing Articles 14 and 16 in the light of the preamble and Article 39(d), we are of the view that the Principle 'equal pay for equal work' is deducible from those Articles and may be properly applied to cases of unequal

P. S. Rao

scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer." The ruling in K.M.L.Bakshi's case was distinguished on the ground that it was concerned with different scales of pay for different grades in a service and the doctrine of equal pay for equal work was really not attracted there.

5. In Randhir Singh's case, the Supreme Court found as a fact that drivers in the Delhi Police force performed the same functions and duties, if not more arduous, as drivers in the service of the Delhi Administration and the Central Government and were therefore, entitled to the same scale of pay as the latter. The following passage in the judgement indicates the basis for this finding: "In answer to the allegation in the petition that the driver constables of the Delhi Police Force perform no less arduous duties than drivers in other departments, it was admitted by the respondents in their counter that the duties of the driver constables of the Delhi Police Force were onerous." Significantly the Court also entered a note of caution before recording its finding. "We conceded," the Court said, "that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay....."

6. We have extracted extensively from the judgement in Randhir Singh's case as we feel in all humility and with the utmost respect that it constitutes a landmark in the development of the law on the subject: it assimilates,

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by a process of interpretation, the principle of equal pay for equal work, into the equality clause of Article 14 thereby converting it into a fundamental right. At the same time it specifies the parameters within which the principle is to be applied in individual cases as well as the roles to be played by the executive and the courts in its implementation.. According to our understanding, the following propositions emerge from the judgement: equation of pay as between different posts is primarily the function of the executive and not ^{of} the Courts. However, where on the facts and averments before the Court, it is clear beyond doubt that "all considerations are the same", the Court itself may order such an equation. In Randhir Singh's case the respondents themselves admitted to the arduous nature of the duties performed by driver constables which were therefore, in no way less than those of drivers elsewhere and the issue was beyond doubt. In Dhirendra Chamoli & Anr. Vs. State of U.P., 1985 (1) SCC 637 again, it was an admitted fact that employees of the Nehru Yuvak Kendra who came before the Court were subject to the same duties and responsibilities as Class IV employees elsewhere in Government but the difference in pay was sought to be justified on other grounds. In Y.K. Mehta's case 1988 (Supp.) SCC 750, lower pay scales allowed to Cameramen, Sound Recordists and Lighting Assistants in Doordarshan vis-a-vis their counterparts in Films Division were sought to be justified not on the ground that their duties and responsibilities were less but on the ground that the former being staff artists engaged on contract formed a separate class from the latter who were fulfilled Governments Servants, which distinction the Court rejected.

7.) Let us now turn to the facts of the present case. As we have already stated, learned counsel for the applicant based his case solely on a comparison of the duties and responsibilities of the two posts, that of CEVSP held

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by the applicant and that of HOL which carries a higher scale of pay. We are not really concerned as to how well the applicant performed his duties: for that matter the respondents do not dispute that he is a good officer. It is the duties and responsibilities attached to a post that should determine the pay scale appropriate to that post and not the individual performance of its incumbents. The principal functions of the Official Languages Wing headed by HOL are set out in the report for 1987-88 of the Ministry of Law annexed at Annexure-16 to the applicant's rejoinder (pages 89 onwards of the application). These are (page 23 of the report):

- A) preparation of a Standard Legal Terminology for use in all the Indian Languages;
- B) Preparation of Authoritative Texts in Hindi of Central Acts, Ordinances, Bills, Regulations, Orders and other Subordinate Legislation in implementation of the provisions of the Official Languages Act 1963; and
- C) Making arrangements for translation of the Constitution of India and Central enactments in the various Official Languages of the States.

It is stated that a legal glossary containing Hindi equivalents of words and phrases occurring in Central Acts published in 1979 for the first time was being constantly revised and enlarged from time to time. Translations of the Constitution into the various Indian languages was also being undertaken. All Bills and amendments introduced in Parliament had to be accompanied by Hindi translations which ^{was} task to be performed by the Official Languages Wing.

8. The functions assigned to the Vidhi Sahitya Prakashan of which the applicant is Chief Editor are set out at page 25 of the above publication. It publishes three monthly law reports in Hindi and standard law books in Hindi for law students, awards prizes to private authors and publishers

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for the best publications in Hindi in the field of law and publishes a quarterly journal giving information of activities in the field of law.

9.) Shri Sen submitted that the functions of the Vidhi Sahitya Parishad of which the applicant is Chief Editor are as arduous and important as those of the Official Wing whose head has been assigned the pay scale of Rs. 5900-6700. Translation had to be made of judgements of Court to be published in the monthly law journals giving headnotes to each judgement which is a work of originality. Seminars had to be organised from time to time to promote the use of Hindi.

10.) Shri Ramchandani on the other hand laid special stress on the work of "instant translation" of Central Bills and amendments introduced in Parliament from time to time assigned to the Official Languages Wing which required greater skill and was a time bound task. Text books published by the Vidhi Sahitya Parishad on the other hand were actually written by authors chosen for the purpose and not by the officials of that Parishad headed by the applicant. It was after taking into account the difference in the nature of duties to be performed by the CEVPS (the post held by the applicant) and by the HOL that the former was placed on a lower scale right from the beginning, i.e. from 1979 and as a result his pay scale after 1.1.1986 was also lower.

11. After careful consideration we are of the view that this application is devoid of merit and has to be dismissed. After all, the question as to whether the two posts are equal in all respects has to be determined by the Government. We find that they did consider the matter and found that the duties of HOL are more arduous. We cannot lightly brush aside Shri Ramchandani's contention that translation of Government Bills within a limited time frame — a task entrusted to the official Languages Wing — is more arduous than publishing law journals and text books written

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by outside experts chosen for the purpose which was the responsibility of the Vidhi Sahitya Parishad headed by the applicant. The responsibility involved in submitting correct Hindi translation of Bills, presented to Parliament is indeed much greater than that shouldered by the applicant in the course of his work. Not only ~~it~~^{it} is ^{it} not clear beyond doubt in this case that "all the relevant considerations are the same" as in the cases decided by the Supreme Court, but the respondents have sought to justify the classification involved in sanctioning differential pay scales by urging considerations which are relevant for the purpose.

12. Moreover on a matter within the discretionary power of the executive like the present one, this Tribunal would be slow to interfere with the decision of the authorities unless it discloses a legal infirmity or is based on irrelevant considerations. ^{As} ~~we~~ we have indicated earlier, the learned counsel for the respondents has pointed out that the duties and responsibilities of the Wing headed by HOL were indeed greater than those of the Wing headed by the applicant in that the former had to undertake translation of bills into Hindi at the time of introduction in Parliament. This was certainly a very relevant consideration and, therefore, we would not be right in interfering with the decision of the executive even if we were to hold a different opinion on the subject.

13. There was a lively debate as to whether the scales of pay initially sanctioned (in 1979) to the post held by the applicant was by mistake fixed at Rs.2000-125-2500 instead of at Rs.2000-175-2500. Another point at issue was whether in view of the fact that the applicant's scale of pay (prior to 1.1.1986) contemplated a faster rate of increment, Rs.125/- annually instead of Rs.125/- ~~biennially~~ as in the case of Directors in the Secretariat, he should have been allotted

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a higher scale after 1.1.1986 than a Director. In our view, these are not relevant for the present purpose. The only criterion for determining whether the applicant should get the scale of Rs.5900-6700 to be on a par with the CHL is whether his duties and responsibilities were the same as those of the latter: the applicant has failed to establish such equality. On the other hand, the respondents on whom the primary responsibility in this regard rests, have clearly shown that the two posts are not equal in every way.

14. In the light of the above, the application is dismissed but in the circumstances of the case, parties to bear their own costs.

T.S. Oberoi
(T.S. Oberoi)
Member (Judl.)

P. Srinivasan
(P. Srinivasan)
Member (Admn.)

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